



May 19, 2000

Ms. Lois Cochran  
Records Custodian  
City of Cleburne  
P.O. Box 677  
Cleburne, Texas 76033-0677

OR2000-2009

Dear Ms. Cochran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135431.

The City of Cleburne (the "city") received a request for all police records regarding six specific individuals. You explain that the city does not possess records regarding one of the named individuals, but that the city has forwarded some of the responsive information that the city does possess to the requestor. You have submitted the remaining responsive information to this office, categorized into Exhibits 2 through 13. However, you only raise exceptions to disclosure in regard to Exhibits 7, 9, 11, and 12. You claim that these exhibits are excepted under sections 58.007 of the Family Code and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing section 552.101 of the Government Code.<sup>1</sup> Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, because the requestor asks for all criminal records of certain named individuals, we believe that these individuals' privacy rights have been implicated. Thus, to the extent that the city has records responsive to the request in

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<sup>1</sup> Although ordinarily this office will not raise exceptions that a governmental body has failed to claim, this office may raise section 552.101 on behalf of a governmental body. *See Open Records Decision Nos. 455 at 3 (1987), 325 at 1 (1982).*

which any of the named individuals are possible suspects, the city must withhold this information under section 552.101. *See id.* Accordingly, the city must withhold Exhibits 4 and 5.

Next, we address your argument regarding section 58.007 of the Family Code. As explained above, section 552.101 of the Government Code encompasses confidentiality provisions such as section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of that statute reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

(1) kept separate from adult files and records; and

(2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Section 51.02(2)(A) defines “child” as a person who is ten years of age or older and under seventeen years of age.

You correctly state that Exhibits 9 and 11 are law enforcement records concerning juvenile conduct that occurred after September 1, 1997. Thus, the reports contained in Exhibits 9 and 11 are confidential pursuant to section 58.007(c) of the Family Code. Accordingly, the city must withhold these reports from disclosure under section 552.101 of the Government Code.

You also contend that Exhibits 7 and 12 are excepted under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(2). This provision only applies to a criminal case that *has concluded* and that did not result in conviction or deferred adjudication. *Id.*

You state that the information contained in Exhibits 7 and 12 pertains to criminal investigations that the police department has declared inactive. Moreover, you argue that neither criminal case resulted in conviction or deferred adjudication. Based on your representations and our review of Exhibits 7 and 12, we conclude that these reports pertain to criminal investigations that have concluded and that did not result in convictions or deferred adjudications. Accordingly, we find that Exhibits 7 and 12 are subject to section 552.108(a)(2).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the type of information that is considered to be front page offense report information to the extent that it appears in Exhibits 7 and 12. Accordingly, with the exception of the basic front page offense report information, the city may withhold Exhibits 7 and 12 from disclosure based on section 552.108(a)(2). Although section 552.108(a)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

Finally, we note that the Exhibit 3 of the submitted documents contains a traffic accident report.<sup>2</sup> The Seventy-fifth Legislature repealed article 6701d and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. See Transp. Code § 550.065. However, a Travis County district court has issued a permanent injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has declared that the law in effect prior to the passage of S.B. 1069 now governs and remains unaffected by the permanent injunction. The law in effect prior to the passage of S.B. 1069 was section 47 of article 6701d, V.T.C.S.<sup>3</sup>

Section 47(b)(1) provides that:

The Department [of Public Safety] or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of

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<sup>2</sup>By "accident report," we refer to the the form prepared by the Texas Peace Officer and not to the corresponding incident report prepared by the Cleburne Police Department.

<sup>3</sup>Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Gen. Laws 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information. See Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. See also Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648.

the report on request to:

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(D) a person who provides the Department [of Public Safety] or the law enforcement agency with two or more of the following:

(i) *the date of the accident;*

(ii) *the name of any person involved in the accident; or*

(iii) *the specific location of the accident.*

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this case, the requestor has not provided the city with the required information, and therefore, the city may not release the accident report to the requestor under section 47(b)(1)(D) of article 6701d, V.T.C.S.

In conclusion, the city must withhold the accident report contained in Exhibit 3 pursuant to section 47(b)(1)(D) of article 6701d, V.T.C.S. The city must withhold Exhibits 9 and 11 under section 58.007 of the Family Code as encompassed by section 552.101 of the Government Code. The city must withhold Exhibits 4 and 5 under section 552.101 in conjunction with common law privacy. The city may withhold most of Exhibits 7 and 12 under section 552.108(a)(2), although the city must release front page information. The city must release the rest of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

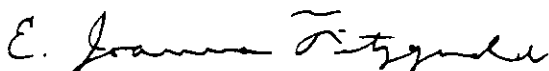
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.324(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\nc

Ref: ID# 135341

Encl: Submitted documents

cc: Mr. John Torti  
512 S. Main Street  
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(w/o enclosures)